

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition by the Colorado Public Utilities	)	
Commission, Pursuant to 47 C.F.R. §54.207(c),	)	
For Commission Agreement in Redefining the	)	CC Docket No. 96-45
Service Area of CenturyTel of Eagle, Inc.,	)	
A Rural Telephone Company	)	
	)	
Petition by the Colorado Public Utilities	)	
Commission, Pursuant to 47 C.F.R. §54.207(c),	)	
For Commission Agreement in Redefining the	)	CC Docket No. 96-45
Service Area of Delta County Tele-Comm, Inc.,	)	
A Rural Telephone Company	)	
	)	

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**COMMENTS OF THE  
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),<sup>1</sup> through the undersigned and pursuant to the *Public Notice* released by the Federal Communications Commission's (FCC's or Commission's) Wireline Competition Bureau (WCB)<sup>2</sup> and pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>3</sup> hereby submits its comments in this Consolidated Proceeding<sup>4</sup> regarding the redefinition of the rural service areas of CenturyTel of Eagle, Inc. (CenturyTel) and

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<sup>1</sup> USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

<sup>2</sup> *Public Notice*, CC Docket No. 96-45, DA 03-26 (rel. Jan. 7, 2003) soliciting comments on a consolidated proceeding regarding the definition of the rural service areas of two rural telephone companies in the state of Colorado (*Public Notice*).

<sup>3</sup> 47 C.F.R. §§1.415 and 1.419.

<sup>4</sup> The *Public Notice* consolidates into one proceeding the Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. §54.207(c), for Commission Agreement in Redefining the Service Area of CenturyTel of Eagle, Inc. a Rural Telephone Company, CC Docket No. 96-45, filed Aug. 6, 2002 (CO PUC CenturyTel Petition); Application for Review, or Alternatively, Petition for Reconsideration of CenturyTel of Eagle, Inc., CC Docket No. 96-45, filed Dec. 17, 2002 (CenturyTel Application for Review); Letter from Karen Brinkman Counsel for CenturyTel, to Marlene H. Dortch, FCC, dated Dec. 30, 2002 (CenturyTel *Ex Parte*); Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. §54.207(c), for Commission Agreement in Redefining the

Delta County Tele-Comm, Inc. (Delta County), both rural telephone companies in the state of Colorado. In both the CO PUC CenturyTel Petition and the CO PUC Delta County Petition, the Colorado Public Utilities Commission (CO PUC) proposes to define each carrier's service area as an area different from its study area for the purpose of determining federal universal service obligations and support mechanisms. More specifically, CO PUC seeks to designate each individual wire center of each carrier as a separate service area for the purpose of designating competitive Eligible Telecommunications Carriers (ETCs) in each carrier's territory.<sup>5</sup>

USTA urges the Commission to grant the CenturyTel Application for Review and CenturyTel's *ex parte* request that the Commission suspend the decision of the Wireline Competition Bureau (Bureau) to let the redefinition of CenturyTel's rural service area take effect. USTA agrees with CenturyTel that the Commission has an affirmative duty under Section 214(e)(5) of the Telecommunications Act of 1996 Act (1996 Act) to consider the recommendations of the Federal-State Joint Board on Universal Service (Joint Board) before establishing a service area for a rural telephone company, which differs from its study area.<sup>6</sup> The Commission's Rule Section 54.207(c)(3)(ii)<sup>7</sup> is not in accord with the requirements imposed on the Commission by Section 214(e)(5). Not having initiated a proceeding on the CO PUC CenturyTel Petition and thus not having issued a written decision on this matter, but having let CO PUC's proposed redefinition of CenturyTel's service area simply take effect, there is no

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Service Area of Delta County Tele-Comm, Inc., a Rural Telephone Company, CC Docket No. 96-45, filed Sept. 13, 2002 (CO PUC Delta County Petition) (collectively Consolidated Proceeding).

<sup>5</sup> See CO PUC CenturyTel Petition at 3 and CO PUC Delta County Petition at 3.

<sup>6</sup> See CenturyTel Application for Review at 4.

<sup>7</sup> FCC Rule Section 54.207(c)(3)(ii) states that "if the Commission does not act on the petition [of a state commission regarding its proposal to change the definition of a rural telephone company's service area to something other than its study area] within ninety (90) days of the release date of the Public Notice, the definition proposed by the state commission will be deemed approved by the Commission and shall take effect in accordance with state procures." 47 C.F.R. §54.207(c)(3)(ii).

evidence that the Commission actually considered a Joint Board's recommendation,<sup>8</sup> as it is required to do by Section 214(e)(5) of the 1996 Act, regarding CO PUC's request to redefine the service area of CenturyTel. USTA urges the Commission to review or reconsider its decision to let the CO PUC service area redefinition take effect, to initiate a proceeding to consider the CO PUC CenturyTel Petition (as the Commission has done in the CO PUC Delta County Petition), and to toll CO PUC's service area redefinition from becoming effective pending its consideration of the CO PUC CenturyTel Petition.

In addition, USTA has previously commented<sup>9</sup> on the proceeding initiated by the Commission regarding the CO PUC Delta County Petition.<sup>10</sup> USTA resubmits here its Comments on the CO PUC Delta County Petition, incorporating them by reference into this Consolidated Proceeding. USTA adds that its Comments on the CO PUC Delta County Petition are applicable to the issues raised in both the CO PUC Delta County Petition and the CO PUC CenturyTel Petition.

In sum, USTA reiterates that Rule 11,<sup>11</sup> a Colorado regulation requiring the study area of a rural incumbent local exchange carrier (ILEC) to be disaggregated according to the plan that the rural ILEC chooses for receipt of universal service support, is inconsistent with a

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<sup>8</sup> Notably, the Commission has issued an Order asking the Joint Board to consider numerous issues relating to universal service portability, including a review of the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC is providing service. *See Federal-State Joint Board on Universal Service*, Order, CC Docket 96-45, FCC 02-307 (rel. Nov. 8, 2002).

<sup>9</sup> *See Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. §54.207(c), For Commission Agreement in Redefining the Service Area of Delta County Tele-Comm, Inc., a Rural Telephone Company*, Comments of the United States Telecom Association, CC Docket No. 96-45 (Oct. 15, 2002) (Comments on the CO PUC Delta County Petition).

<sup>10</sup> *See Public Notice*, CC Docket No. 96-45, DA 02-2383 (rel. Sept. 25, 2002) in which the Bureau initiated a proceeding to consider the CO PUC petition to redefine the service area of Delta County in the state of Colorado and solicited comment on the CO PUC Delta County Petition.

<sup>11</sup> *See* 4 Code of Colorado Regulations 723-42-11, Use of Disaggregation Paths (Rule 11).

Commission Order on Reconsideration<sup>12</sup> because in that Order on Reconsideration the Commission rejected a request that a study area should automatically be disaggregated for purposes of ETC designation whenever a rural study area is disaggregated for purposes of universal service funding.<sup>13</sup> Yet, Rule 11 has the effect of automatically requiring a rural ILEC's study area to be disaggregated pursuant to the level of disaggregation that the rural ILEC chooses for receipt of universal service support.<sup>14</sup>

USTA also reiterates that Rule 11 is inconsistent with the Commission's Rule Section 54.207(b) and Section 214(e)(5) of the 1996 Act, both of which state that a rural telephone company's service area is its study area "unless and until the Commission and the states, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area for such company."<sup>15</sup> CO PUC has not explained how Rule 11 has taken into consideration a Joint Board recommendation, even generally, regarding a change in a rural company's service area to something less than its study area.<sup>16</sup> Moreover, Rule 11 – by the very fact that it is a rule that applies to all carriers – does not comply with Commission Rule Section 54.207(b) or Section 214(e)(5) of the 1996 Act, each of which requires that the Joint Board must make a recommendation specifically with regard to a

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<sup>12</sup> See *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Petitions for Reconsideration filed by: Coalition of Rural Telephone Companies, Competitive Universal Service Coalition, Illinois Commerce Commission, National Telephone Cooperative Association*, Order on Reconsideration, CC Docket Nos. 96-45 and 00-256, (rel. June 13, 2002) (Order on Reconsideration). The Order on Reconsideration addresses matters raised in the Commission's Fourteenth Report and Order. See *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, CC Docket Nos. 96-45 and 00-256 (rel. May 23, 2001) (Fourteenth Report and Order).

<sup>13</sup> See Order on Reconsideration, para. 17.

<sup>14</sup> See USTA's Comments on the CO PUC Delta County Petition at 2-3.

<sup>15</sup> See 47 C.F.R. §54.207(b) and 47 U.S.C. §214(e)(5).

<sup>16</sup> See USTA's Comments on the CO PUC Delta County Petition at 3-4.

particular company as a basis for consideration by the Commission and the states regarding a change in the definition of service area for a rural carrier.<sup>17</sup> State rules such as Rule 11 underscore the importance and necessity of the Commission's consideration of a Joint Board recommendation with regard to any change in the definition of a rural telephone company's service area to something other than its study area.

Finally, USTA reiterates that CO PUC's proposed changes to the service areas for CenturyTel and Delta County raise significant public policy concerns, particularly the concern that new entrants into the markets served by CenturyTel and Delta County and other similarly situated rural ILECs will be encouraged to serve only the most lucrative service areas (*i.e.*, new entrants will "cherry pick" these lucrative areas), leaving CenturyTel, Delta County, and other similarly situated rural ILECs with the obligation to serve all service areas, as carriers of last resort, without the financial benefit of revenues previously earned in their lucrative service areas.<sup>18</sup> The result of such "cherry picking" by such new entrants is that CenturyTel and Delta County and other rural ILECs like them will be financially disadvantaged by the loss of customers in their lucrative service areas, which ultimately results in loss of revenue that is used to update and expand their networks to provide quality service to all customers in all their service areas, yet such rural ILECs will retain the burden to continue providing service in all of their service areas.<sup>19</sup>

For these reasons, the Commission should grant CenturyTel's Application for Review, grant CenturyTel's *ex parte* request to suspend the decision of the Bureau to let the redefinition of CenturyTel's rural service area take effect, and should not agree to CO PUC's request to

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<sup>17</sup> See USTA's Comments on the CO PUC Delta County Petition at 4-5.

<sup>18</sup> See USTA's Comments on the CO PUC Delta County Petition at 5-6.

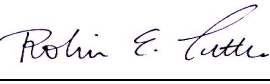
<sup>19</sup> See *id.*

redefine the service areas of CenturyTel or Delta County as an area other than their study areas.

The Commission's actions in this Consolidated Proceeding have significant precedential impact on efforts in other states to redefine the service area of the rural ILEC as something other than its study area.

Respectfully submitted,

**UNITED STATES TELECOM ASSOCIATION**

By: 

Lawrence E. Sarjeant  
Indra Sehdev Chalk  
Michael T. McMenamin  
Robin E. Tuttle

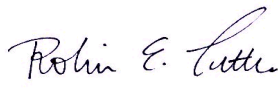
Its Attorneys

1401 H Street, NW, Suite 600  
Washington, D.C. 20005  
(202) 326-7300

February 6, 2003

## CERTIFICATE OF SERVICE

I hereby certify that a copy of USTA's Comments was served on this 6<sup>th</sup> day of February 2003 by electronic delivery or first class, postage prepaid mail to the persons listed below.

By:   
Robin E. Tuttle

The following parties were served:

Anthony Marquez  
State Service Building  
1525 Sherman Street 5th Floor  
Denver, CO 80203

David Money  
27355 S. 4340 Rd.  
Vinita, OK 74301

Anne C. Boyle  
300 The Atrium  
1200 N Street  
Lincoln, NE 68509 -4927

Latham & Watkins  
Tonya Rutherford  
555 11th Street, N.W. Suite 1000  
Washington, DC 20004 -1304

Ardon M. Doran  
506 Broadway  
PO Box 136  
Abercrombie, ND 58001

Allegiance Telecom  
1919 M St.  
Washington, DC 20036

Wesley M. Franklin  
505 Van Ness Avenue  
San Francisco, CA 94102 -3298

Sprint Corporation  
401 9th Street NW.,  
Suite 400  
Washington, DC 20004

NTCA  
Dan Mitchell  
4121 Wilson Boulevard, 10th Floor  
Arlington, VA 22203

Earl Bishop - Virginia Telecommunications  
Industry Association  
1108 E. Main St.  
Suite 800  
Richmond, VA 23219 -3551

Wilkinson Barker Knauer, LLP  
Charles Keller  
2300 N Street, NW  
Suite 700  
Washington, DC 20037

Mississippi Public Service Commission  
Michael Callahan  
501 N. West Street  
Suite 201-A  
Jackson, MS 39201

AT&T  
1120 20th Street NW  
Washington, DC 20036

McLoud Telephone Company  
Lyle Dewey  
3555 N.W. 58th  
Suite 900  
Oklahoma City, OK 73112

BEK Communications Cooperative  
Jerome Tismack  
200 East Broadway  
P.O. Box 230  
Steele, ND 58482 -0230

Southeastern Indiana Rural Telephone  
Cooperative, Inc.  
Daniel C. Weaver  
6315 Seabrook Road  
Seabrook, MD 20706

Oregon Public Utility Commission  
Phil Nyegaard  
550 Capitol Street N.E.  
Suite 215  
Salem, OR 97301 -2551

Dobson Telephone Company  
Lyle Dewey  
3555 N.W. 58th  
Suite 900  
Oklahoma City, OK 73112

Utah Public Service Commission  
Stephen F. Mecham  
Heber M. Wells Building 160 East 300  
South  
Box 45585  
Salt Lake City, UT 84145 -0585

Hogan & Hartson L.L.P.  
Angela E. Giancarlo  
Columbia Square  
555 Thirteenth Street, N.W.  
Washington, DC 20004 -1109

National Telecommunications  
Cooperative Association  
Daniel Mitchell:  
4121 Wilson Blvd., 10th Floor  
Arlington, VA 22203

Latham & Watkins  
Jeffrey A. Marks  
555 Eleventh Street, NW Ste. 1000  
Washington, DC 20004 -1304



Lukas, Nace, Gutierrez & Sachs,  
Chartered  
David LaFuria  
1111 19th Street, N.W., Suite 1200  
Washington, DC 20036

Colorado Public Utilities Commission  
Anthony Marquez  
1525 Sherman Street, 5th Floor  
Denver, CO 80203

Kraskin, Lesse & Cosson, LLP  
Clifford Rohde  
2120 L Street, NW, Ste. 520  
Washington, DC 20037

Holland & Knight, LLP  
Margot Smiley  
2099 Pennsylvania Avenue, N.W.  
Suite 100  
Washington, DC 20006

John Staurulakis Incorporated  
Sharon J. Olson  
Eagandale Corporate Center, Suite 310  
1380 Corporate Center Curve  
Eagan, MN 55121

Vermont Academy  
Robert A.  
PO Box 500  
20 Pleasant Street  
Saxtons River, VT 05154 -0500

Cellular Telecommunications & Internet  
Association  
1250 Connecticut Avenue, NW  
Suite 800  
Washington, DC 20036

Verizon  
Ann H. Rakestraw  
1515 North Courthouse Road  
Suite 500  
Arlington, VA 20191

Brantley, Wilkerson & Bryan, P.C.  
Mark D.  
P.O. Box 830  
Montgomery, AL 36101 -0830

Horizon Science Academy  
Sedat Duman  
6000 South Marginal Road  
Cleveland, OH 44103

Greenberg Traurig, LLP  
Mitchell F. Brecher  
800 Connecticut Avenue, N.W.  
Suite 500  
Washington, DC 20006